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IN THE
COURT OF APPEALS OF INDIANA

STEPHANIE R. CLAY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 47A04-0612-CR-692
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable Michael Robbins, Judge
Cause No. 47D01-0604-FC-199

August 2, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Stephanie Clay appeals her sentence for robbery as a class C felony[1] and conspiracy to commit robbery as a class C felony.[2] Clay raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing Clay; and

II. Whether Clay's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On April 22, 2006, Clay and Travis Collins went to a pharmacy in Lawrence County with the intent to rob it. Clay remained outside while Collins entered the store to determine how many employees were present in the pharmacy. Collins came back out and reported to Clay that there were two employees inside. Clay then entered the store and knowingly took medications from Lisa Russell, one of the employees, by placing her in fear. Minutes after the robbery, police apprehended Clay and Collins, and Clay confessed to robbing the pharmacy.

On April 24, 2006, the State charged Clay with robbery as a class C felony and conspiracy to commit robbery as a class C felony. On June 21, 2006, Clay pleaded guilty to both charges. The plea agreement left the sentencing to the trial court's discretion.

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[1] Ind. Code § 35-42-5-1 (2004).

[2] Ind. Code § 35-41-5-2 (2004).

At the sentencing hearing, Clay asked the trial court to consider the following mitigating factors: (1) that she accepted responsibility for the crime; and (2) that she only had one prior conviction. The trial court found the fear of the victims and Clay's prior conviction to be aggravating factors and found no mitigating factors. The trial court sentenced Clay to the Indiana Department of Correction for a term of six years with two years suspended for each count and ordered that the sentences be served concurrently.

We note that Clay's offense was committed after the April 25, 2005, revisions of the sentencing scheme. In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonable detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State (filed June 26, 2007), Ind. No. 43S05-0606-CR-230, slip op. at 11. The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion. Id. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse of discretion. Id. Appellate review of the merits of a sentence may be sought on the grounds outlined in Ind. Appellate Rule 7(B). Id.

I.

The first issue is whether the trial court abused its discretion in sentencing Clay. Clay argues that: (A) the trial court failed to find her guilty plea to be a significant mitigating factor; and (B) the trial court improperly found her criminal history to be an aggravating factor.

A. Mitigator

Clay argues that the trial court failed to assign the appropriate mitigating weight to her guilty plea. "The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). The trial court does not abuse its discretion in failing to consider a mitigating factor that was not raised at sentencing. Georgopulos v. State, 735 N.E.2d 1138, 1145 (Ind. 2000). If the defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the factor is not significant, and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal. Creekmore v. State, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006), trans. denied.

Here, although Clay confessed to the robbery when apprehended and accepted responsibility for her drug abuse at the sentencing hearing, she did not advance her guilty plea as a mitigator. Thus, the alleged mitigating circumstance is precluded from review. See Anglemyer v. State (filed June 26, 2007), Ind. No. 43S05-0606-CR-230, slip op. at 12-13 (holding that the defendant's guilty plea and other alleged mitigating circumstances that were not raised at sentencing are precluded from review); but see Creekmore, 853 N.E.2d at 530 (holding that a guilty plea is entitled to mitigating weight "even where the defendant did not specifically request that the trial court consider his guilty plea as mitigating").

B. Aggravator

Clay also argues that the trial court improperly considered her criminal history as an aggravator. Clay concedes that she has one conviction for conversion as a class A misdemeanor, which occurred "approximately two weeks" before the robbery of the pharmacy. Transcript at 19. However, Clay argues that the trial court improperly found her criminal history to be an aggravator because: the prior offense was not serious; it was her only prior offense; and it "logically stems from [her] drug abuse induced crime spree." Appellant's Brief at 9.

The significance of a criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999), reh'g denied. For example, a "non-violent misdemeanor ten years in the past . . . would hardly warrant adding ten or twenty years to the standard sentence" in a murder case. Deane v. State, 759 N.E.2d 201, 205 (Ind. 2001).

Here, Clay's prior conviction for conversion, though a misdemeanor, directly relates to the current offenses of robbery and conspiracy to commit robbery. The offenses are similar in nature. Furthermore, the offense of conversion occurred only two weeks before Clay robbed the pharmacy and, therefore, was not too remote in time to warrant consideration as an aggravating factor. Finally, we note that the trial court found her prior conviction to be "somewhat [of an] aggravating . . . circumstance" and only enhanced her sentence by two years, which were then suspended. Transcript at 34. We cannot say that the trial court abused its discretion in considering Clay's criminal history

as an aggravator. See, e.g., Williams v. State, 830 N.E.2d 107, 114 (Ind. Ct. App. 2005) (holding that prior misdemeanor convictions can support a sentencing enhancement when the enhancement is not substantial), trans. denied.

II.

The next issue is whether Clay's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Clay conspired with Collins to rob a pharmacy. Collins entered the store to determine how many employees were present and then reported to Clay that there were two employees inside. Clay entered the store and knowingly took medications from Lisa Russell, one of the employees, by placing her in fear.

Our review of the character of the offender reveals that Clay was convicted of conversion "approximately two weeks" before she robbed the pharmacy. Transcript at 19. This offense was part of the same crime spree that resulted in Clay's convictions for robbery and conspiracy. Clay pleaded guilty, accepted responsibility for her drug abuse, and expressed remorse for her crimes. However, Clay's convictions reveal a growing

inclination to take from others using intimidation, if necessary, to meet her needs without regard to the impact on others.

After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Patterson v. State, 846 N.E.2d 723, 731 (Ind. Ct. App. 2006) (holding that the defendant's enhanced sentence for robbery was not inappropriate).

For the foregoing reasons, we affirm Clay's sentence for robbery as a class C felony and conspiracy as a class C felony.

Affirmed.

MAY, J. and BAILEY, J. concur